IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6710 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KUNDANBHAI @ MAHESH TAKO @ MAYLO S/O.LALJIBHAI HARKHANI

Versus

STATE OF GUAJRAT

Appearance:

1. Special Civil Application No. 6710 of 2005

MR AR SHAIKH for Petitioner No. 1

RULE SERVED BY DS for Respondent No. 1-2

GOVERNMENT PLEADER for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 09/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the detenue through his father,- Laljibhai Ranchhodbhai Patel challenging his detention in pursuance of the order passed against him by Police Commissioner, Surat City, on

19.01.2005, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (PASA Act for short). The detenu is under detention as dangerous person from 31st of March, 2005.

2. The grounds of detention as placed on record, reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the Detaining Authority took into consideration 3 crimes registered against the detenu for the offences punishable under Sections 379 and 114 of the Indian Penal Code for theft of mobile phones by the detenu and secondly two in-camera statements as recorded by the Sponsoring Authority on 8th of January, 2005 and 9th of January, 2005 as verified by the Detaining Authority on 18th of January, 2005. The identity of the witnesses is not disclosed by the Detaining Authority, claiming privilege under Section 9(2) of the PASA Act.

3. All the three crimes came to be registered against the detenu before D.C.B. Police Station, Surat, on 10th of November, 2004, 5th of Novermber, 2004 and on 25th of Novermber, 2004. In each of these three cases, it was alleged that the detenu was involved in theft of mobile phones. The Detaining Authority considered exhaustively and thoroughly the investigation papers in the above said cases and came to the conclusion that the detenu was a habitual offender of committing offence of theft of mobile phones.

4. Out of two in-camera statements, first witness referred to an incident of 24th of October, 2004. The witness alongwith his passenger vehicle was at vehicles-stand, waiting for passengers in the area of Katargam Police Station. At about 7=00 p.m. the detenu and his two accomplices approached the witness. They were in all four persons. The detenu directed the witness to take his vehicle to Varachha Road, Mini Bazar to sale mobile phones. The witness replied that only three persons could be accommodated in his vehicle and four persons could not be accommodated. Thereupon the detenu and his accomplices got excited and dragged the witness at the public place and started beating him. The witness raised shouts for help which attracted the crowd. Some persons from the crowd attempted to rescue the witness. Thereupon detenu and his accomplices with stick blows damaged the vehicles parked around. The shops were closed in the area and fear was spread out and the normal life was also disturbed. The second witness referred to an incident of 28th of November, 2004. The witness was

present at his business place at Varachha area. At about 12=30 hrs. the detenu and his accomplices came there and beckoned witness out of his shop and stated that they had 15 to 20 mobile phones of different companies which the witness should keep in his shop and sale them on commission. The witness knew the activities of the detenu and,therefore, he refused to keep such phones in his shop. Thereupon, the detenu and his accomplices got excited and started beating the witness in the public place. The witness raised shouts for help which attracted the crowd of persons. Some of them attempted to rescue the witness, but the detenu and his accomplices with open knives and sticks rushed towards the persons of crowd to beat them, so people started running helter-skelter. The detenu and his accomplices damaged the parked vehicle through the blows of the sticks. Business in the locality was closed and normal life was disrupted and the public order was also disturbed.

5. Relying upon the above materials, the Detaining Authority came to the conclusion that the detenu was engaged in illegal activities of committing thefts of mobile phones and was a habitual offender. The Detaining Authority came to the conclusion that the detenu was dangerous person within the meaning of PASA Act. The Detaining Authority also concluded that the detenu was headstrong, ferocious and of violent temper and was keeping deadly weapons with him. It was also alleged against the detenu that the detenu formed a gang of headstrong persons and alongwith the said gang, was committing the offence of theft and was in a habit of picking up quarrels with the citizens and thereby beating them. The Detaining Authority further concluded that the activities of the detenu were prejudicial to the maintenance of the public order and such activities were required to be prevented forthwith. After considering other alternative remedies available against the detenu under the general law, the Detaining Authority reached to the subjective satisfaction that there was no other alternative, except to detain the detenu under the PASA Act. The Detaining Authority, therefore, passed the order of detention of the detenu, as aforesaid, which is under challenge in this petition.

6. Learned Advocate Ms.Banna Dutta for the detenu and learned AGP Mr.Pandya for the respondents were heard at length. The affidavit-in-reply filed by the Detaining Authority and placed on record, is taken into consideration.

7. Out of various grounds urged on behalf of the detenu

to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible and cogent materials placed before the detaining authority to come to the conclusion that by the activities of the detenu, the public order was disturbed.

8. To reach to the subjective satisfaction that the dangerous activities of the detenu were prejudicial to the maintenance of public order, the detaining authority must rely upon cogent and credible material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or widespread or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life property or the public health. While undertaking this exercise, the detaining authority must apply his mind about the difference between the cases falling in the category of "breach of law and order" and the cases falling in the category of "breach of public order."

09. True that as many as three cases came to be registered against the detenu for theft of mobile phones. It was also alleged that in these cases, mobile phones alleged to be stolen were recovered during investigation. The detaining authority took into consideration the investigation papers in all these three cases. Therefore, the prime issue for consideration is, the activities revealed through the investigating papers in all three cases can be branded to be activities disturbing the public order as noted above. Undoubtedly, these three cases came to be filed against the detenu for theft of mobile phones. These cases are pending for disposal according to law. The activities disclose through the investigating papers in these three cases may be an offence being the activities against penal statute of country, but it could not at all be said that the activities of the detenu reveal through the investigating papers formed an offence under the penal law are the activities disturbing the public order to the extent that widespread danger to life and property could be inferred. At the most filing of these cases being offences may be labelled as breach of law and order for which the detenu is going to be tried and may be punished, if found guilty. But as aforesaid, the act constituting the offence cannot be said to have affected the even tempo of life of community, therefore, filing of the cases may be three in numbers against the detenu, have no bearing at all on the question of maintenance of public order.

11. The rest of the material, which relied upon by the detaining authority is in the form of two incamera statements. While any activity is to be judged within the scope, as to whether such activities disturbed the public order, it becomes the duty of the detaining authority to consider fall out, reach and impact of the activities, revealing through materials placed before him and then come to the conclusion that whether potentiality of the activities alleged was capable of disturbing the public order. On going through minutely and carefully and applying the above said principle of law, it clearly appears that two incidents narrated through incamera statements were more individual disputes and to involve the society at large or disturbing the even tempo of life of the community. Employing phrases by the witnesses like disruption of traffic and normal life and spreading of fear and terror, or employing such prashes by the detaining authority in the reasons, could not stretch the alleged activities to the extent of such activities disturbing the public order. While such activities are scanned through its fall out, reach and impact, it is clear that these are not the activities disturbing the public order. Therefore, the potentiality of the act alleged through incamera statements, even from the bare reading of them, do not disclose capability to disturb the even tempo of life of the community or society at large or section of the society. It is clear that from the said activity, neither widespread danger to the society nor dangerousness or harmfulness affecting the society could be inferred from such activities of the detenu disclosing through incamera statements. Therefore, even after taking two incamera statements on there face value they are unable to convince that the activities disclosed by the statements were prejudicial to the maintenance of public order. At the most the acts disclosed through the statements, may be breach of law and order and could be taken care by the general law.

12. In the matter of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Ors., reported in 2000 (1) G.L.H. 393, wherein after considering many decisions of the Apex Court, the Division Bench of this Court has observed in paragraphs No.20 and 21 as under.

> "20. The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and T. Devaki v. State of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority

and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly, in T. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was high lighted. It was also alleged that people were scared and had run helter skelter. In spite of such allegations the Supreme Court held that they were not cases of maintenance of public order and hence, an action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again, in Mustakmiya Jabbarmiya Shaikh v. M.M.Mehta, Commissioner of Police and others, 1995 (2) GLR 1268 (SC), the Supreme Court considered the relevant decisions on point including the decision in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

13. The present set of facts are squarely covered by the above said decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki [supra]. In this view of the matter, the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the detenu, cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

14. In the result, the petition is allowed. The order passed by the Police Commissioner, Surat City on 19th January, 2005 against the detenu in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Kundanbhai @ Mahesh Tako @ Maylo S/o. Laljibhai Harkhani, is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made

absolute. Direct service is permitted.

[J. R. VORA,J.]

09.05.2005
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